UNITED
NATIONS

CCPR

International Covenant on Civil and Political Rights

Distr.
RESTRICTED*

CCPR/C/64/D/594/1992
3 December 1998

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Sixty-fourth session
19 October - 6 November 1998

VIEWS

Communication Nº 594/1992

Submitted by:	Irving Phillip (represented by Ms. Natalia Schiffrin of Interights, in London)
Alleged victim:	The author
State party:	Trinidad and Tobago
Date of communication:	13 February 1989 (initial submission)
Date of adoption of Views	20 October 1998

On 20 October 1998, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 594/1992. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

ANNEX*

VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
- Sixty-fourth session -

concerning

Communication Nº 594/1992**

Submitted by:	Irving Phillip (represented by Ms. Natalia Schiffrin, of Interights.
Victim:	The author
State party:	Trinidad and Tobago
Date of communication:	13 February 1994 (initial submission)
Date of decision on admissibility:	15 March 1996

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 20 October 1998

Having concluded its consideration of communication No.594/1992 submitted to the Human Rights Committee by Mr. Irving Phillip, under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, his counsel and the State party,

Adopts the following:

---

* The following members of the Committee participated in the examination of the present communication: Mr. Prafullachandra N. Bhagwati, Mr. Thomas Buergenthal, Mrs. Christine Chanet, Lord Colville, Mr. Omar El Shafei, Ms. Elizabeth Evatt, Ms. Pilar Gaitan de Pombo, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Julio Prado Vallejo, Mr. Martin Scheinin, Mr. Roman Wieruszewski, Mr. Maxwell Yalden, and Mr. Abdallah Zakhia.

**Pursuant to rule 85 of the rules of procedure, Committee member Rajsoomer Lallah, did not participate in the adoption of the Views.

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Irvin Phillip, a Trinidadian citizen serving a life sentence at the State Prison of Port-of-Spain, Trinidad and Tobago. He claims to be a victim of a violation of articles 7, 10 (1) and 14 (1), 14 (3) (b), (d) and (e) of the International Covenant on Civil and Political Rights by Trinidad and Tobago. He is represented by Ms. Natalia Schiffrin of Interights.

The facts as submitted

2.1 The author, together with Peter Holder[1] and Errol Janet, was jointly charged with the murder, on 29 March 1985, of one Faith Phillip (no relation to the author). On 5 May 1988, after a trial which lasted one month, the jury failed to return a unanimous verdict, and a retrial was ordered. On 18 June 1988, the accused were found guilty as charged and sentenced to death by the Second Assizes Court of Port-of-Spain. On 5 April 1990, the Court of Appeal of Trinidad and Tobago dismissed the appeal of Messrs. Holder and Phillip, whereas it acquitted Errol Janet; it issued a written judgement two weeks later. Mr. Phillip's petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 24 April 1991. On 31 December 1993 Mr. Phillip's death sentence was commuted to life imprisonment.

2.2 The subject of the communication is Mr. Phillip's second trial, at which the Court denied the legal aid attorney's motion for an adjournment in order to better prepare for the defence or, in the alternative, to allow Mr. Phillip to engage other counsel.

2.3 Ms. Zelina Mohammed, a cashier at the Zodiac Recreational Club in Port-of-Spain was the sole eye witness to the crime and the prosecution's main witness. At trial she testified that, on the morning of 29 March 1985, she was at work, inside the bar, and that Faith Phillip sat in front of the bar, when three men came in. Mr. Holder ordered a drink and after a while went downstairs; she heard a sound as if the gate to the entrance was being closed. When Mr. Holder came back, she asked Faith Phillip, to have a look. Shortly thereafter Mr. Phillip assaulted Faith Phillip, while Mr. Holder kicked open the door to the bar and entered the bar together with Mr. Janet. Both were holding knives. Mr. Holder forced Ms. Mohammed to open the cash register and give them $300. She was also forced to show them the room of the Club's owner which was at the back. There, Mr. Holder tied her up, while Mr. Janet searched the room for valuables. She was told to face the wall, but before doing so she saw Mr. Phillip in the corridor, pulling Faith Phillip into another room. She then heard fighting, which continued for about five minutes. After it stopped she heard footsteps, as if the accused were leaving. Finally, she was untied by the Club's electrician who passed by and they found Faith Phillip lying on the floor, with her face swollen and blood running from her nose. The deceased was pronounced dead on arrival to hospital. The cause of death was a massive brain haemorrhage, resulting from blunt force injuries to her head.

[1] Communication No. 515/1992, declared inadmissible on 19 July 1995 because of non-exhaustion of domestic remedies.

2.4 At the identification parade held on 4 April 1985 Ms. Mohammed selected Mr. Phillip from a group of eight men as someone who "looked like" one of the persons involved in the crime. Mr. Phillip claims mistaken identification.

2.5 At the trial, Mr. Holder gave sworn testimony admitting participation in the robbery. He denied, however, having struck the deceased. He stated that while he and Mr. Janet were emptying the drawers in the Club owner's room, he saw Mr. Phillip going up the corridor with Faith Phillip. When they left the building, they met Mr. Phillip outside.

2.6 The prosecution stated that all three defendants made statements under caution, witnessed by a justice of the peace, admitting their involvement in the crime. In his statement the author admitted the robbery but denied taking any part in the beating of the deceased. At trial, however, he gave sworn testimony denying knowledge of the crime, claiming that he had never left his home on 29 March 1985 and challenging the identification by Ms. Mohammed. His statement to the police was admitted into evidence after a voir dire.

2.7 Mr. Janet affirmed upon oath his previous statement to the police. He stated that the robbery was planned by Messrs. Holder and Phillip, who had received information that the owner of the Club kept all his money at the Club. Out of fear of both men, he assisted in the robbery. He further stated that he prevented Mr. Holder from further hitting the deceased.

The complaint

3.1 The author claims that his trial was unfair in breach of article 14, paragraph 1, of the Covenant. In this context he complains about the inconsistency in the testimony of witnesses during the first trial. He points out that, as the prosecution failed to prove his guilt at the first trial, he should have been acquitted. The author further claims that, as the prosecution had failed to prove his mens rea, the judge should have brought the issue of manslaughter to the attention of the jury.

3.2 With respect to the time and facilities to prepare his defence in the retrial, the author claims that counsel was appointed on Friday 10 June 1988 and that the trial commenced on Monday 13 June 1988. Counsel's request for additional time to prepare the defence and to meet with Mr. Phillip was denied, in violation of article 14, paragraphs 3 (b) and (e) of the Covenant.

3.3 He further complains that he was denied a counsel of his choosing at the retrial, in violation of article 14, paragraph 3 (d). It appears from the notes of evidence that during the retrial the author complained about the performance of his counsel who was young and had never defended a capital case. Accordingly the author requested an adjournment to obtain a counsel of his own choice. The judge advised counsel to make his application to withdraw from the case in court. The court subsequently refused counsel's application. The author states that the judge told him that he could not afford an attorney of his own choice and that therefore the case would not be postponed. According to the author, his conviction is attributable to the judge's tyrannical behaviour in addition to the inexperience of counsel.

3.4 With respect to the conditions under which Mr. Phillip is detained, counsel argues that the prison cell is underground, filthy, with bad ventilation and infested with cockroaches and rats. He sleeps on pieces of carpet and torn cardboard box on the cold concrete floor without any bedding. Food is inadequate. There are no toiletries or medication. The complaints, however, have not been reported to any authorities, because the author fears reprisal from the warders and claims to be living in complete fear for his life. These conditions are said to constitute violations of articles 7 and 10 (1) of the Covenant.

State party's observations and author's comments

4.1 In its submission of 23 September 1993 the State party objects to the admissibility of the communication and refers, in particular, to the Committee's jurisprudence according to which the evaluation of facts and evidence is for the Courts of States parties.

4.2 It further informs the Committee that on 23 August 1993, Irvin Phillip filed a constitutional motion in the High Court in which he is seeking a declaration that the execution of the sentence of death on him will be unconstitutional, null and void as well as an order vacating the sentence of death and staying the execution. On 23 August 1993, the Court granted a conservatory order directing the State to undertake that no action would be taken to carry out the sentence of death on the author until the hearing and determination of the motion.

4.3 Moreover, the State party argues:

(a) The author has not indicated the provision or provisions of the Covenant on Civil and Political Rights which he alleges have been violated by the Republic of Trinidad and Tobago; and

(b) The facts as submitted do not raise issues under any of the provisions of the Covenant;

(c) According to the constant jurisprudence of the Human Rights Committee, it is in principle not for the Committee but for the Courts of States Parties to the Covenant to evaluate facts and evidence in a particular case. The decision of the courts in Trinidad and Tobago and the Privy Council in this case cannot be viewed as being arbitrary or as amounting to a denial of justice;

(d) By reasons of the foregoing, the communication is incompatible with the provisions of the Covenant.

4.4 In its submission of 9 February 1995, the State party informs the Committee that pursuant to the judgment of the Judicial Committee of the Privy Council in the case of Earl Pratt and Ivan Morgan v. the Attorney General of Jamaica, the sentences of death against Messrs. Peter Holder and Irvin Phillip were commuted to sentences of life imprisonment.

5.1 By letter of 21 June 1994, Interights, a non-governmental organization in the United Kingdom informed the Committee that it had been asked by Mr. Phillip to represent him before the Committee.

5.2 By letter of 27 March 1995 Interights resubmitted the communication on behalf of Mr. Phillip, enclosing the text of the notes of evidence and the transcript of the trial before the Second Assize Court in Port-of-Spain against Messrs. Peter Holder, Irvin Phillip and Errol Janet.

The Committee's admissibility decision

6.1 During its 56th session the Committee considered the admissibility of the communication.

6.2 The Committee ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement.

6.3 As to the requirement in article 5, paragraph 2 (b), of the Optional Protocol that domestic remedies be exhausted, the Committee noted that the Privy Council had dismissed the author's application for leave to appeal. Therefore, with regard to the author's allegations of unfair trial, the Committee was satisfied that domestic remedies had been exhausted for purposes of the Optional Protocol. In this connection, the Committee also noted that, following the commutation of the author's death sentence, the author's constitutional motion before the High Court had become moot.

6.4 As regards the author's claim that the conditions of his detention were cruel, inhuman and degrading, the Committee noted that the State party had so far not attempted to refute his claim nor had it provided information about effective domestic remedies available to the author. In these circumstances, given the author's statement that he had not filed a complaint because of his fears of the warders, the Committee considered that it was not precluded by article 5, paragraph 2 (b), of the Optional Protocol from examining the complaint, which might raise issues under articles 7 and 10 of the Covenant.

6.5 With regard to that part of the author's communication relating to the evaluation of evidence and to the instructions given by the judge to the jury, in particular, the failure to instruct the jury on the possibility of manslaughter, the Committee referred to its established jurisprudence that it was, in principle, for the appellate courts of States parties to the Covenant, and not for the Committee, to evaluate facts and evidence in a particular case. As to the author's allegation that he had not made any admission to the police and that the identification by the main prosecution witness was faulty, the Committee noted that these matters were the subject of a voir dire, at which the facts and evidence were evaluated. Similarly, it was not for the Committee to review specific instructions to the jury by the judge, unless it could be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The material before the Committee did not reflect that the trial judge's instructions or the conduct of the trial suffered from such defects. This part of the communication was therefore inadmissible under article 3 of the Optional Protocol.

6.6 As to the other claims under article 14, paragraph 3, the Committee found that the author had substantiated, for purposes of admissibility, his

allegations that at the retrial he did not have sufficient time and facilities to prepare his defence, that his defence counsel was inexperienced and that he was denied the opportunity to obtain counsel of his own choosing. The Committee considered that it should examine this part of the communication on the merits.

6.7 Consequently, on 15 March 1996, the Human Rights Committee declared the communication admissible in as much as it appeared to raise issues under articles 7, 10, and 14, of the Covenant.

Issues and proceedings before the committee:

7.1 The Committee has considered the communication in the light of all the information provided by the parties. It notes with concern that, following the transmittal of the Committee's decision on admissibility, no further information has been received from the State party clarifying the matters raised by the present communication despite reminders sent on 11 March 1997, 30 April and 12 May 1998. The Committee recalls that it is implicit in article 4, paragraph 2, of the Optional Protocol, that a State party examine in good faith all the allegations brought against it, and that it provide the Committee with all the information at its disposal. In light of the failure of the State party to cooperate with the Committee on the matter before it, due weight must be given to the author's allegations, to the extent that these have been substantiated.

7.2 The Committee notes that the information before it shows that the author's counsel requested the court to allow him an adjournment or to withdraw from the case, because he was unprepared to defend it, since he had been assigned the case on Friday 10 June 1988 and the trial began on Monday 13 June 1988. The judge refused to grant the request allegedly because he felt the author would be unable to afford counsel of his own choice. The Committee recalls that while article 14, paragraph 3(d), does not entitle the accused to choose counsel provided to him free of charge, the Court should ensure that the conduct of the trial by the lawyer is not incompatible with the interests of justice. The Committee considers that in a capital case, when counsel for the accused who was not experienced in such cases requests an adjournment because he is unprepared to proceed the Court must ensure that the accused is given an opportunity to prepare his defence. The Committee is of the opinion that in the instant case, Mr. Phillip’s counsel should have been granted an adjournment. In the circumstances, the Committee finds that Mr. Phillip was not effectively represented on trial, in violation of article 14, paragraph 3 (b) and (d), of the Covenant.

7.3 The Committee considers that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not respected constitutes, if no further appeal against conviction is possible, a violation of article 6 of the Covenant. As the Committee noted in its General Comment 6 [16], the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that " procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review of conviction and sentence by a higher tribunal". In this case, since the final sentence of death was passed without due respect for the requirements of article 14, the Committee must hold that there has also been a violation of article 6 of the Covenant.

7.4 The Committee notes that with regard to the author's conditions of detention he has made precise allegations, of being kept in a filthy, badly ventilated, cockroach and rat infested, underground cell. He sleeps on pieces of carpet and torn cardboard box on cold concrete floor, with no bedding. Food is inadequate and there are no toiletries or medication. The State party has made no attempt to refute these specific allegations. In the circumstances and in the absence of a response from the State party, the Committee takes the allegations as undisputed. It finds that holding a prisoner in the above conditions of detention violates his right to be treated with humanity and with respect for the inherent dignity of the human person, and is therefore contrary to article 10, paragraph 1.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of articles 10, paragraph 1, and 14, paragraph 3 (b) and (d), and consequently of article 6 of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Phillip with an effective remedy, including immediate release and compensation. The State party is under an obligation to ensure that similar violations do not occur in the future.

10. Bearing in mind that by becoming a State party to the Optional Protocol, Trinidad and Tobago has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within ninety days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee’s Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee’s annual report to the General Assembly.]